

BARRETT S. DUFF

IBLA 91-82

Decided February 26, 1992

Appeal from a decision of the California State Office, Bureau of Land Management, dismissing a protest of public land exchange CACA-24896.

Affirmed.

1. Exchanges of Land: Generally--Federal Land Policy and Management Act of 1976: Exchanges

Protests against an exchange of public land for private land under the authority of sec. 206 of the Federal Land Policy and Management Act of 1976 are properly dismissed if the protestants do not establish that the proposed exchange would violate the Act, applicable regulations, or contravene the public interest. While an oil and gas lessee may be individually inconvenienced by an exchange that transfers the surface estate out of Federal control, this fact alone, in the absence of a showing that lease rights have been diminished, is insufficient to establish that the exchange is not in the interest of the United States.

APPEARANCES: Barrett S. Duff, pro se, King City, California.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Barrett S. Duff has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated October 18, 1990, dismissing his protest of land exchange CACA-24896. This decision was primarily premised on a finding that Duff's interests in his Federal oil and gas leases would not be adversely affected by the exchange.

Duff had protested from a Notice of Realty Action (NORA) published in the Federal Register on March 30, 1990, at 55 FR 12060, for a proposed land exchange between BLM and CAL-BLMX, Inc. The proposed action described in the NORA involved exchanging the surface estate of selected public lands for the surface estate of identified private lands under the authority of section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1716 (1988). The expressed purpose of the action is

to acquire the non-Federal lands to improve access to existing Federal lands for recreational users, to eliminate an existing

checkerboard ownership pattern potentially opening an additional 16000+ acres to public use, to acquire habitat occupied by [certain threatened or endangered species], to acquire the historically significant Joaquin Rocks, to acquire significant archaeological and potentially significant vertebrate fossil resources, and to acquire significant riparian habitat areas.

55 FR 12060, 12062 (Mar. 30, 1990). BLM identified the public lands for exchange as "generally isolated parcels surrounded by private lands with no public access. Several small parcels proposed for disposal have public access but are of insignificant size to provide reasonable public uses." *Id.* In the NORA, BLM emphasized: "Ownership of the mineral estate will not be affected by the exchange." *Id.*

Duff, in his protest, voiced the following concerns: (1) the ability to access his Federal oil and gas leases should the surface be patented to another private party; (2) the disposal of potential habitat for several threatened or endangered species not identified in the NORA and of archaeologically sensitive areas; and (3) the break-up of existing contiguous parcels into smaller scattered parcels. Duff's four oil and gas leases affected by the NORA and the lands involved are described as follows: ^{1/}

CACA 12257 (Primary term of lease to expire October 1, 1992)
T. 22 S., R. 9 E., Mount Diablo Meridian
sec. 22, E1/2NE1/4
sec. 23, NW1/4

CACA 19987 (Primary term of lease to expire July 1, 1998)
T. 21 S., R. 8 E., MDM
sec. 34, NE1/4SW1/4, S1/2SW1/4
sec. 35, E1/2SE1/4

CACA 23157 (Primary term of lease to expire March 1, 1999)
T. 21 S., R. 8 E., MDM
sec. 33, NW1/4SE1/4, S1/2SE1/4

CACA 23392 (Primary term of lease to expire September 1, 1999)
T. 22 S., R. 8 E., MDM
sec. 3, lot 4, SW1/4SW1/4

In his protest, Duff objected to an exchange of any of the public lands in the following townships: T. 21 S., R. 7 E.; T. 21 S., R. 8 E.; T. 22 S., R. 8 E.; T. 22 S., R. 9 E., Mount Diablo Meridian.

^{1/} On Nov. 19, 1991, BLM furnished copies of two notices sent to appellant. Appellant was notified that two of the leases relevant to his protest, CACA-23392 and CACA-12257, had automatically terminated on Sept. 1 and Oct. 1, 1991, for failure to timely pay rental. Even assuming that these leases have not been reinstated, however, this appeal is not made moot, inasmuch as the remaining two leases are affected by the proposed exchange.

In response to Duff's protest, BLM modified the list of lands to be exchanged. However, this modification did not affect those lands encompassed by Duff's oil and gas leases as described above. See BLM's October 18, 1990, Decision. BLM then dismissed the protest with respect to those lands, stating:

The proposed exchange is for the surface estate only and patents issued for the public land will contain a reservation to the United States, its permittees, licensees, lessees, and mining claimants [of] the right to prospect for, mine, and remove the minerals owned by the United States under applicable law and such regulations as the Secretary of the Interior may prescribe. The patent to the Federal lands also will be subject to your mineral leases, which allows you the right to prospect for and remove the minerals leased to you as long as your leases are valid. * * * Your rights will not be affected by our exchange of the lands because of the reservation of the mineral estate to the U.S., plus making the patent subject to your mineral leases. Legal and physical road access to your leases is presently controlled by private landowners and legal access in the future will not change due to our patenting of isolated public lands. * * * Therefore, access to your federal mineral leases will not be affected.

Id. at 1-2.

In his statement of reasons, Duff asserts that the "[d]ecision is in error in that it assumes that the value of my leases will not be impacted by the transfer of ownership of the surface to private parties." Duff argues that BLM's assurance that the right to remove minerals will be protected ignores the fact that such right "is subject to the obtaining of proper permits from the governing authorities." Describing the permits he considers will now be required, he contends that "permitting on Federal lands is less costly and time consuming." He further alleges that, contrary to BLM's statements, his access to the leases will be adversely affected by the exchange inasmuch as he will be forced to traverse private lands. Duff also challenges BLM's judgment that the lands involved here are isolated or uneconomical to manage.

[1] Exchanges of public land for private land are authorized by section 206 of FLPMA, supra, upon a finding that the public interest will be "well served." The statute directs that the Secretary, in considering the public interest,

shall give full consideration to better Federal land management and the needs of the State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife and [authorizes disposal by exchange provided that] the Secretary concerned finds that the values and the objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the value of the non-Federal lands or interests and the public objectives they could serve if acquired.

43 U.S.C. § 1716(a) (1988). The weight to be given every element bearing on such decisionmaking is left to the discretion of the Secretary. John S. Peck, 114 IBLA 393, 397 (1990). An obvious corollary to a determination of whether the transfer of public land would serve the public interest is the evaluation of whether the transfer would adversely impact the public interest. Thus, BLM must assess the impact of proposed or anticipated development of the public land it passes out of Federal ownership. City of Santa Fe, 103 IBLA 397 (1988).

Parcels included in the exchange are located in 56 separate townships within the geographical area administered by the Hollister Resource Area, BLM. The Hollister Resource Management Plan provides the basic guidance and general policy for this land exchange. The lands of the four subject leases were evaluated as part of Townships 38, 43, and 44 of Management Area 13 (Williams Hill). BLM identified the mineral resources of this particular area as "potentially high" for oil and gas. Acknowledging the existent oil and gas leases on the selected public lands, the various feasibility reports prepared by BLM for the subject exchange provide BLM's evaluation of the proposed action:

SELECTED LANDS - The selected lands are primarily small isolated parcels surrounded by private lands. These lands have been identified for disposal in the Hollister RMP. Two small parcels have public access but are not large enough to provide reasonable public recreation opportunities. Most of the selected lands are located in central San Benito or south Monterey counties. County supervisors have indicated strong support for this exchange. Disposal of these lands is expected to allow for more efficient and better management of recreation and range resources on remaining public lands in the resource area.

(Supplemental Feasibility Report for CAL-BLMX Phase II Exchange at 3). The mineral report prepared for the proposed exchange comments:

The [Williams Hill] Management Area is located in Monterey County and contains 18,479 acres of public land, of which approximately 1/4 are selected lands in the proposed exchange action.

The predominant geomorphic feature of the MA is the Santa Lucia Range west of the Salinas Valley containing Williams Hill (elevation 2,780 feet). The lowest elevations along the Salinas River at 500 feet and also in the Jolon/San Antonio Valleys at about 900 feet. The public lands in the MA are characterized by steep, rugged topography, and dense brush covered hills. Chamise and mixed chaparral or oakbrush are the most common plant communities. A community of Monterey knobcone pine also occurs naturally in the Williams Hill area * * *.

Much of the Management Area is leased for oil and gas. [Emphasis in original.]

(Mineral Potential Report (August 1990) at 37). An environmental assessment considers the effect of exchange on oil and gas lessees, concluding that:

Oil & gas lessees would not be affected since minerals would remain in federal ownership. Lessees would have to negotiate surface rights with the new landowners, but lessees already have to negotiate access with these same landowners who currently control access to the federal lands. An oil & gas lessee holding leases in the Williams Hill area has objected to the exchange, contending that the new surface owners could interfere with opportunities to explore and develop potential oil & gas resources. Oil and gas lessees, however, have the legal right to explore and develop oil & gas resources on split estate lands with reasonable compensation to surface owners.

(Environmental Assessment CA-019-0-050 (CAL-BLMX Exchange - Phase II) at 36-37). Finally, the mineral report concludes that:

Both the United States Government and the many new surface owners benefitting from this exchange are entering into the agreement fully knowledgeable that the owner of the mineral estate, their assigns and/or lessees, will continue to hold the right to mine and extract mineral resources together with the right to use so much of the surface as is necessary in extraction operations. These terms and conditions will be included in the transfer of title of surface estate between the U.S. Government and all affected private parties on all selected and offered parcels. [Emphasis in original.]

(Mineral Potential Report at 3). Based upon these evaluations, BLM determined that the exchange will not affect ownership or development of the mineral estate and the public interests will be well served. 55 FR at 12062. We find that BLM has substantially reviewed the particular lands at issue and determined suitability for transfer out of Federal control. The record supports the conclusion that the exchange will result in the objectives stated by BLM.

Protests against an exchange are properly dismissed if the protestants do not establish that the proposed exchange would violate the Act, applicable regulations, or contravene the public interest. City of Santa Fe, 103 IBLA at 402. There is no assertion made by Duff that the statute or the regulations have been violated.

In this instance, although appellant contends that his lease rights will be jeopardized because of the patenting of the surface interest, he points to no provision in leases that will be violated by the exchange, and none is revealed by a review of the lease terms. Although it is reasonable to assume that exercise of the lease rights may pose separate concerns because of the creation of split estates in the leased land, appellant's apprehensions are focused on future operations on the leases. Appellant, however, has not shown that his contract rights under the lease have been diminished. Appellant has a statutory right, as the lessee of

the United States, to enter the patented land for the purpose of extraction of reserved minerals. 43 U.S.C. § 1719(a) (1988). This right will be expressly reserved in the patent. The rights of the surface owner are, in law, subservient to the rights of the United States, as reserved mineral interest holder, to authorize its lessees to prospect for and develop these reserved minerals. Id.

The record establishes that the exchange is in the public interest. Appellant has failed to significantly dispute the findings made by BLM concerning the proposed exchange. While appellant may be individually inconvenienced by the exchange, this fact is not sufficient to show that the exchange is not in the interest of the United States. Moreover, he has not shown, but has only suggested, that his lease rights have been jeopardized. As there has been no showing that the exchange is contrary to the public interest nor any demonstration that there is an error in the exchange process itself, the decision to deny the protest must be affirmed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge